Supreme Court, U. S.
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No. 80-21

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

HEART MINISTRIES, INC.; VICTORY VILLAGE HOME FOR GIRLS; WILLIAM COWELL AND CAROL COWELL, AS DIRECTORS AND OPERATORS OF VICTORY VILLAGE HOME FOR GIRLS, AND AS INDIVIDUALS,

Appellants,

v.

STATE OF KANSAS, EX REL., JOSEPH P. O'SULLIVAN, COUNTY ATTORNEY, RENO COUNTY, KANSAS,

Appellee.

On Appeal From The Supreme Court Of Kansas

MOTION TO DISMISS OR AFFIRM

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The appellee, the State of Kansas, moves that the final judgment of the Supreme Court of Kansas be affirmed or that this appeal be dismissed on the ground that the federal question is so unsubstantial as to not warrant argument or briefs. As an alternative ground, this appeal should be dismissed because the notice of appeal was not filed with the Supreme Court of Kansas within the time allowed by law.

QUESTION PRESENTED

Do the Kansas state statutes, as construed, which permit state regulation of group homes for children violate the First Amendment to the United States Constitution when the group homes are operated by religious institutions?

STATUTES INVOLVED

This appeal attacks the validity of the laws relating to maternity hospitals and homes for children, found at Kansas Statutes Annotated 65-501, et seq. Many of the pertinent statutes are set out at pages A66 through A71, inclusive, in appellants' Jurisdictional Statement.

INTRODUCTION

This appeal stems from the judgment of the state District Court of Reno County, Kansas, in which the appellants were permanently enjoined from operating and holding themselves out to the public as a maternity hospital or group boarding home for children. The State of Kansas, acting on the relation of the County Attorney of Reno County, Kansas, had sought to enjoin the appellants from operating a home for children until such time as they applied for and received a license for such a home. The Kansas supreme court recognized the need for regulation of group homes for children in the case below, State of Kansas v. Heart Ministries, et al. 227 Kan. 244, 607 P.2d 1102 (1980):

> "The compelling interest of the State, as parens patriae, is the protection

> of its children from hunger, cold, cruelty, neglect, degradation, and inhumanity in all its forms. To fulfill this responsibility, the legislature has elected to impose licensing and inspection requirements. To this requirements the defendants' free exercise rights must bow; the balance weighs heavily in favor of those unfortunate children whom the State must protect." Id., at p. 257.

Appellants have contended they should be exempt from licensing requirements because Heart Ministries is also a religious organization, and to subject the group home for children to a licensing program would infringe upon the free exercise of religion as guaranteed by the First Amendment to the United States Constitution.

The judgment by the trial court in favor of appellee State was appealed, and the Supreme Court of the State of Kansas affirmed the trial court and denied a motion for rehearing. This appeal followed.

ARGUMENTS AND AUTHORITIES

Appellants have asserted there are four substantial federal questions. In reality, the sole question is whether the state statutes which require regulation of group homes for children operated by religious institutions are in violation of the First Amendment of the United States Constitution.

However, the appellants' position that their group homes for children should be exempt from licensing and regulation of the living conditions solely because the home is operated by a religious organization is patently meritless.

Under the First Amendment to the Constitution of the United States, the freedom of appellants to believe as they see fit remains inviolate, but their

freedom to act in society is not inviolate and is subject to reasonable regulation by a state (or the United States) for the protection of the society which extends the right of religious freedom. Cantwell v. Connecticut, 310 U.S. 296, 303, 304 (1940); Reynolds v. United States, 98 U.S. 145, 164 (1878). Moreover, society's interest in the reasonable regulation of acts performed in accordance with religious beliefs is broader and greater where the welfare and safety of children are involved. Prince v. Massachusetts, 321 U.S. 158, 168, 169 (1944).

In any case where the interests of freedom of religion and public welfare clash, the propriety of governmental regulation must be examined in light of the two-pronged test enunciated by Wisconsin v. Yoder, 406 U.S. 212 (1972), at page 214 of the opinion:

> . . . it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.

The regulation of group homes for children as provided in Kansas Statutes Annotated 65-501, et seq., meets either test, since:

> (1) such regulation cannot be said to "interfere with the practice of a legitimate religious belief," and
>
> (2) the "state interest" in the case of welfare of children residing in child care institutions is of sufficient magnitude to override the interest claiming protection under the First Amendment.

This Court recently dismissed a very similar case in which the Texas Child Care Licensing Act of 1975 came under a similar attack. Roloff Evangelistic Enterprises, Inc., et al. v. State of Texas, 556 S.W.2d 856, appeal dismissed 439 U.S. 803, rehearing denied 439 U.S. 998 (1978).

As an alternative ground, this Court should dismiss the appeal since the notice of appeal was not filed until over sixty days after the final judgment of the Supreme Court of the State of Kansas. See appellants' Jurisdictional Statement, Appendix, pages A25, A61. The applicable statutes are 28 U.S.C. Sec. 1257(2), 28 U.S.C. Sec. 2104, and 28 U.S.C. Sec. 2101(b).

Appellants' claim the regulation of their group home for children infringes on First Amendment rights is without merit, and the judgment below should be affirmed, or this appeal should be dismissed for want of a substantial federal question.

Respectfully submitted,

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